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10/743,278	12/22/2003	Chinnaswamy Anandha Ramakrishnan	U 014954-5	4477

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EXAMINER

MCCORMICK EWOLDT, SUSAN BETH

ART UNIT PAPER NUMBER

1654

DATE MAILED: 02/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/743,278

Applicant(s)

RAMAKRISHNAN ET AL.

Examiner

Susan B. McCormick-Ewoldt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 July 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

#### **Claims Pending**

Claims 1-11 will be examined on the merits.

#### **Claim Objections**

Claim 11 step c) is objected to because of the following informalities: a period at the end of the sentence. Appropriate correction is required.

Claim 10 is objected to because of the following informalities: the recitation “increasing it commercial and nutritive values.” This is a narrative phrase that is improper for US claim language.

#### **Claim Rejections - 35 USC § 112**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Claim 1 recites the limitation “the concentrating *Garcinia* extract” in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 9 recites the limitation “the free hydrocitric acid content” in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 10 recites the limitation “the free hydrocitric acid content in line 1. There is insufficient antecedent basis for this limitation in the claim.

In claim 11, steps a), c) and d), the recitation “may be effected” is unclear in its meaning. The use of “may be” is indefinite because it is unclear if these are required steps. If the steps are not required, it is unclear how the product would be produced. Clarification is needed.

In claim 11, step b), the slash between *G. pedunculata* and *G. cowa* is indefinite because it is not clear if it denotes “and” or “or.” Clarification is needed.

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Claim 11, step e) recites the limitation “the HCA” in line 1. There is insufficient antecedent basis for this limitation in the claim.

In claim 11, step i), “was” appears to be past tense when the rest of the claim is in present tense.

In claims 1-11, it is not clear as to how a process is athermal if a heating step is required? Clarification is needed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moffett *et al.* (US 5,536,516) in view of Bowser (US 6,299,777 B1) and Jena *et al.* (“Organic Acids from Leaves, Fruits and Rinds of *Garcinia cowa*”).

An athermal process for obtaining hydrocitric acid from concentrating *Garcinia* extract by osmotic membrane distillation is claimed.

Moffett *et al.* (US 5,536,516) disclose carrying out an extraction process of *Garcinia* with de-mineralized water and heated (boiled) for a period of 30 minutes to obtain the extraction liquor (column 5, lines 1-5). Moffett *et al.* does not disclose the specific *Garcinia* species as claimed or the process of osmotic membrane distillation.

Bowser (US 6,299,777 B1) discloses using osmotic membrane distillation for the extraction of concentrated liquid. Because of this important characteristic, osmotic distillation recently has gained much favorable attention in particular for the potential to concentrate liquid foodstuffs, cosmetics and pharmaceutical products (column 1, lines 40-44). Fruit juice with pulp i.e. pieces of fruit can be selected for the type of liquid foodstuffs and this process can be used for pharmaceutical products (column 3, lines 39-40; column 4, lines 2-4). Bowser *et al.* also

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disclose using calcium chloride as the osmotic agent (column 4, lines 35-37; column 7, line 63) and a temperature maintained at 25°C (column 8, line 3).

Jena *et al.* ("Organic Acids from Leaves, Fruits and Rinds of *Garcinia cowa*") discloses that hydrocitric acid is contained in the rind of the species of *Garcinia cowa*.

It would clearly have been obvious to one of ordinary skill in the art to use osmotic membrane distillation for the concentration of hydrocitric acid from *Garcinia cowa* and *Garcinia pedunculata* as taught by the cited references. Based on the reasonable expectation of success one of ordinary skill in the art would be motivated to use osmotic distillation for the extraction of hydrocitric acid in *Garcinia cowa* because of the favorable attention to concentrate liquid foodstuffs as disclosed by the reference.

The references also do not specifically teach the temperatures in the amounts claimed by Applicant. The temperature of a specific ingredient in a composition is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. Optimization of parameters is a routine practice that would be obvious for a person of ordinary skill in the art to employ. It would have been customary for an artisan of ordinary skill to determine the optimal amount of temperature in order to best achieve the desired results. Thus, absent some demonstration of unexpected results from the claimed parameters, this optimization of temperature would have been obvious at the time of Applicant's invention.

The references also do not specifically teach the volumes in the amounts claimed by Applicant. The volume of a specific ingredient in a composition is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. Optimization of parameters is a routine practice that would be obvious for a person of ordinary skill in the art to employ. It would have been customary for an artisan of ordinary skill to determine the optimal amount of each volume in order to best achieve the desired results. Thus, absent some demonstration of unexpected results from the claimed parameters, this optimization of volume would have been obvious at the time of Applicant's invention.

From the teaching of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at

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the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

Summary

No claim is allowed.

Future Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Susan B. McCormick-Ewoldt whose telephone number is (571) 272-0981. The Examiner can normally be reached Monday through Thursday from 6:00 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached on (571) 272-0974. The official fax number for the group is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

sbme

*Susan D. Coe*  
2-8-05  
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PATENT EXAMINER